

APPEAL NO. 030428
FILED APRIL 14, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 21, 2003. The hearing officer determined that the appellant (carrier) has not met the statutory prerequisites to contest compensability of the respondent's (claimant's) alleged _____ injury; that the claimant sustained a compensable injury on _____; that the claimant had disability from September 19, 2002, and continuing through the date of the hearing; that the claimant is entitled to temporary income benefits for such period; and that the claimant timely reported an injury to his employer. The carrier appeals and urges reversal on all the issues. The claimant urges affirmance.

DECISION

Reversed and rendered in part; affirmed in part.

The hearing officer determined that the carrier waived the right to contest compensability of the claimed injury because it has not met the prerequisites of the Act to contest compensability. Section 409.021(a) provides that the insurance carrier is to begin the payment of benefits as required by the 1989 Act or notify the Texas Workers' Compensation Commission (Commission) and the claimant of its refusal to pay benefits within seven days after receiving written notice of the injury. It is undisputed that the carrier received written notice of the claimed injury via facsimile on transmission September 19, 2002, at 6:03 p.m. It is also undisputed that the carrier filed its Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) with the Commission on September 27, 2002. The carrier contends that because notice from the employer was given to the carrier after normal business hours by facsimile transmission at 6:03 p.m., the carrier did not receive notice until the following day, and it timely contested compensability of the claimed injury by filing its TWCC-21 on September 27, 2002, seven days after the date of actual notice.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.3(d) (Rule 102.3(d)) provides that "[a]ny written or telephonic communications received other than during normal business hours on working days are considered received at the beginning of normal business hours on the next working day." Texas Workers' Compensation Commission Appeal No. 030105, decided February 21, 2003; *see also* Texas Workers' Compensation Commission Appeal No. 030028, decided February 24, 2003. Because the written notice to the carrier was received at 6:03 p.m., after normal business hours, the carrier did not receive written notice until September 20, 2002, and it timely contested the claim by filing its TWCC-21 on September 27, 2002. Thus, the hearing officer erred in deciding the carrier had not met its statutory prerequisites to contest compensability. We reverse the hearing officer's determination that the carrier waived its right to contest compensability of the alleged _____ injury, and render a

new decision that the carrier did not waive its right to contest the compensability of the claim.

Whether the claimant sustained a compensable injury, gave timely notice to his employer, and had disability are factual questions for the hearing officer to resolve. The hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence, as well as the weight and credibility that is to be given to the evidence. Section 410.165(a). The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We have reviewed the injury, timely notice, and disability determinations and conclude that the hearing officer's decision's are supported by sufficient evidence.

The hearing officer's determination of carrier waiver is reversed and rendered as noted above. In all other respects, we affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Michael B. McShane
Appeals Panel
Manager/Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge